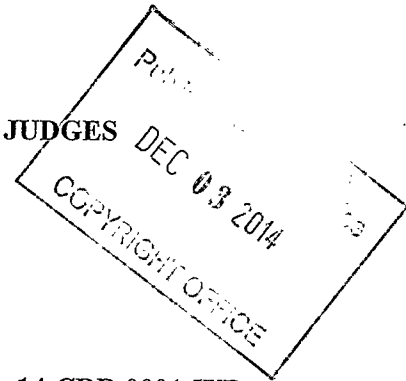


BEFORE THE
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
WASHINGTON, D.C.



In re

DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
DIGITAL PERFORMANCE OF SOUND
RECORDINGS (*WEB IV*)

DOCKET NO. 14-CRB-0001-WR
(2016-2020)

**SOUNDEXCHANGE'S MOTION TO COMPEL iHEARTMEDIA TO PRODUCE
DOCUMENTS RELATED TO THE TESTIMONY OF DAVID PAKMAN**

David Pakman, a purported expert witness, testifies on behalf of iHeartMedia that the webcasting industry “has fared poorly due primarily to royalty rates that are too high.” Pakman WDT ¶ 11. Despite the fact that Mr. Pakman bases this opinion on the “evaluation of potential investments while at Venrock” (his venture capital firm), *id.*, and despite the fact that Mr. Pakman testifies regarding Venrock’s investment decisions, iHeartMedia has refused to produce any documents related to Venrock’s evaluation of investments in digital music services.

Because documents related to Venrock’s evaluation of digital music investments are “directly related” to David Pakman’s testimony, the Judges should compel iHeartMedia to produce these documents. *See* 17 U.S.C. § 803(b)(6)(C)(v); 37 C.F.R. § 351.5.¹ Without these documents, SoundExchange will not have a fair opportunity to test Mr. Pakman’s testimony, including his otherwise unsupported assertion that high royalties are “the primary reason” that

¹ SoundExchange conferred with iHeartMedia regarding this document request on November 18, 2014. *See* 37 C.F.R. § 351.5(b)(1).

firms such as Venrock have allegedly declined to invest in digital music services. Pakman WDT at 5.

I. Background of the Requests and Responses

A. David Pakman Testifies Regarding Venrock's Investment Decisions

Mr. Pakman is a partner at Venrock, a venture capital firm. Pakman WDT ¶ 1. iHeartMedia and NAB have jointly offered Mr. Pakman as an expert witness in support of their respective written direct statements. According to Mr. Pakman, the webcasting industry has fared poorly due to high royalty rates, and he claims that his testimony on this point is "based" on two things: (1) his long personal experience as an investor in digital music companies and (2) his "evaluation of potential investments while at Venrock." Pakman WDT ¶ 11.

Mr. Pakman contends that Venrock is *unwilling* to invest in digital music services because royalty rates are too high. One section of his testimony is entitled: "Venrock invests in many internet and other high-tech companies, *but it and other investors are unwilling to invest in digital music services.*" Pakman WDT at 4 (emphasis added). In that section, Mr. Pakman claims: "Collectively, as a firm, Venrock has invested in more than 200 internet and technology companies." *Id.* Yet, "[d]espite Venrock's heavy investment in internet and technology companies and [Mr. Pakman's] extensive experience as an entrepreneur in the digital music business, Venrock has never invested in any digital music or internet radio companies." *Id.* Mr. Pakman contends that this alleged unwillingness to invest in digital music services is due to high royalty rates: "High royalty rates are *the primary reason* for the lack of investment in webcasting services" *Id.* at 5 (emphasis added).

B. SoundExchange Requested Documents Concerning Venrock's Evaluation of Investments in Digital Music Services, But iHeartMedia Refused to Produce Them

SoundExchange requested documents that concern "any investment proposed or considered by Venrock in any business incorporating digital music, including all documents relating to the reasons Venrock either invested or did not invest."² Despite the fact that this request seeks documents that directly relate to a central assertion in Mr. Pakman's testimony, iHeartMedia refused to produce the requested documents. In addition to boilerplate objections relating to burden, iHeartMedia objected that the requested documents are not in its possession or control.

Instead of producing the requested documents, iHeartMedia agreed only to produce "notes in Mr. Pakman's possession concerning digital music investment opportunities that he has considered."³ iHeartMedia confirmed in the meet and confer process that this means that it is not conducting any search or production of documents from Venrock. Except for these approximately 50 pages of scattered and generally incomprehensible notes, *see, e.g.*, Olasa Decl. Ex. C, iHeartMedia withheld all other documents related to Venrock's evaluation of digital music investments, and confirmed that it intends to stand on that objection.

II. Argument

A. The Requested Documents Are Directly Related to David Pakman's Testimony

As a purported expert testifying based on his experience in a particular industry, Mr. Pakman "must explain how that experience leads to the conclusion reached." *Reach Music Pub.*,

² Olasa Decl., Ex. A, at 10, SoundExchange's First Set of Requests for Production of Documents to iHeartMedia No. 29.

³ Olasa Decl., Ex. B, at 22, iHeartMedia's Amended Responses and Objections to SoundExchange's First Set of Requests for Production of Documents No. 29.

Inc. v. Warner Chappell Music, Inc., 988 F. Supp. 2d 395, 405 (S.D.N.Y. 2013) (quoting Fed. R. Evid. 702, Advisory Committee Notes (2000)). In this proceeding, Mr. Pakman connects his testimony and conclusions to his industry experience by making specific factual assertions based on his experience with venture capital firms, including Venrock. Because these specific assertions include claims regarding Venrock's decisions to not invest in digital music services and the reasons for these decisions, documents concerning Venrock's evaluation of digital music investments are "directly related" to Mr. Pakman's testimony.

Without the requested documents, SoundExchange will not be able to meaningfully test or rebut Mr. Pakman's assertions, such as his assertion that Venrock is "unwilling to invest in digital music services." Pakman WDT at 4. Venrock's documents could undermine this claim by showing that Venrock is, in fact, willing to invest in digital music services but simply has not found the right opportunity. Alternatively, Venrock's documents could rebut Mr. Pakman's sweeping claim that high royalty rates are the primary reason that Venrock and other venture capital firms have not invested in digital music services. Pakman WDT at 5. iHeartMedia cannot offer Mr. Pakman's purported expert testimony as to Venrock's past investment decisions or analysis of investment opportunities without allowing SoundExchange the opportunity to determine whether these statements comport with Venrock's own documents.

B. iHeartMedia can obtain the requested documents from David Pakman

iHeartMedia's objection that the requested documents are not within its custody or control should be overruled. In prior proceedings, the Judges have required participants to produce documents in their witnesses' possession, custody, or control. *See Order Granting Motion to Compel SoundExchange to Provide Information and Documents Concerning the Written Direct Testimony of Simon Renshaw*, at 1-2, Docket No. 2006-1 CRB DSTRA (May 17, 2007). In this case, David Pakman is a partner at Venrock and can undoubtedly obtain the

requested documents because, as a partner at Venrock, he has the “practical ability to obtain” the documents. *Tiffany (NJ) LLC v. Qi Andrew*, 276 F.R.D. 143, 147 (S.D.N.Y. 2011). If he has no such practical ability, then he would not have been able to make the sweeping statements about Venrock that his expert testimony contains.

III. Conclusion

Because documents concerning “any investment proposed or considered by Venrock in any business incorporating digital music, including all documents relating to the reasons Venrock either invested or did not invest” are directly related to David Pakman’s testimony and within Mr. Pakman’s possession, custody or control, the Judges should compel iHeartMedia to produce the requested documents.

Dated: December 3, 2014

Respectfully submitted,

By: Glenn D. Pomerantz / zk

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
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In re

DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
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RECORDINGS (*WEB IV*)

DOCKET NO. 14-CRB-0001-WR
(2016-2020)

DECLARATION OF KURUVILLA J. OLASA

I, Kuruvilla J. Olasa, declare as follows:

1. I am an attorney with Munger, Tolles & Olson LLP and am counsel for SoundExchange, Inc., in Docket No. 14-CRB-0001-WR (2016-2020).
2. I submit this Declaration in support of SoundExchange's Motion to Compel iHeartMedia to Produce Documents Related to the Testimony of David Pakman.
3. This Declaration is made based upon my personal knowledge.
4. On November 18, 2014, I met and conferred with counsel for iHeartMedia regarding iHeartMedia's failure to produce certain documents related to the testimony of David Pakman, including documents that concern Venrock's evaluation of potential investments in businesses incorporating digital music. During the meet and confer, iHeartMedia's counsel informed me that iHeartMedia would not produce any documents from Venrock as such documents were not within iHeartMedia's possession or control.
5. Exhibit A is a copy of the Public version of SoundExchange's First Set of Requests for Production of Documents to iHeartMedia, which was served on iHeartMedia on

PUBLIC VERSION


October 13, 2014.

6. Exhibit B is a copy of the Public version of iHeartMedia's Amended Responses and Objections to SoundExchange's First Set of Requests for Production of Documents, which SoundExchange received on November 24, 2014.

7. Exhibit C is a copy of IHM_EXP-NAB_0000420, a document produced by iHeartMedia in this proceeding and an example of David Pakman's notes. Because iHeartMedia has designated this document as "Restricted," pursuant to the terms of the October 10, 2014, Protective Order SoundExchange is filing this document under seal and is redacting it from the "Public" version of SoundExchange's Motion to Compel iHeartMedia to Produce Documents Related to the Testimony of David Pakman.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury under the laws of the United States that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: December 3, 2014



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Ex. A

EXHIBIT A

PUBLIC VERSION

**DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
DIGITAL PERFORMANCE OF SOUND
RECORDINGS (WEB IV)**

**DOCKET NO. 14-CRB-0001-WR
(2016-2020)**

Pursuant to 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b)(1), SoundExchange, Inc. serves this First Set of Requests for Production of Documents on iHeartMedia, Inc. These Requests are continuing in nature and may require supplementation.

1. The present tense shall be construed to include the past and future tenses and the past and future tenses shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these document requests.
2. The singular shall be construed to include the plural and the plural shall be construed to include the singular as required by the context to elicit all information discoverable within the broadest scope of these document requests.
3. “And” and “or” have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these document requests.
4. “Any” and “all” shall mean “each and every.”

5. The term “documents” shall be construed broadly, consistent with the Federal Rules of Civil Procedure, and includes but is not limited to every writing, recording, photograph, summary, data set, spreadsheet or record, in any form, whether handwritten, printed, typed, taped, electronic or in any other graphic, digital, magnetic, optical, or mechanical form, however produced, reproduced, or recorded, and includes electronic documents (such as electronic mail messages and all attachments to electronic mail messages).
6. The term “communication” means the transmittal of information by any means and includes communication of any kind, whether written, oral, electronic, or other.
7. The term “including” is illustrative and not limitative and shall be construed to elicit all information discoverable within the broadest scope of these document requests.
8. The terms “reflecting,” “referring,” “concerning,” “relating to,” “related to,” and “showing” include: addressing, pertaining to, referring to, concerning, comprising, identifying, stating, consisting of, evidencing, alluding to, responding to, connected with, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of, incorporating, mentioning, embodying, containing, studying, reporting on, commenting on, considering, recommending, constituting in any way, or having any logical or factual connection with the subject matter.
9. iHeartMedia refers to iHeartMedia, Inc., its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, and predecessors of its corporate affiliates, parents, subsidiaries, business units and divisions, and their representatives, officers, agents, servants, counsel, employees, consultants, and any person authorized to act, acting, or purporting to act on their behalf. iHeartMedia also includes the witnesses and experts submitting testimony in this proceeding as part of the written direct case of iHeartMedia, Inc.

10. "You" and "your" refer to iHeartMedia as defined above and/or the witnesses and experts submitting testimony in this proceeding as part of the written direct case of iHeartMedia.
11. Please provide separate written responses to all of the following document requests, and repeat each request and the number of each request with each response. If you object to any request, identify the number of the request to which you object, state the basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to the portion of the request that you do not find objectionable.
12. Documents sought in these requests include documents currently or previously within your knowledge, possession, or control, as well as those documents which come into your possession subsequent to service hereof. Each of the following document requests is continuing in nature and SoundExchange hereby requests that if you obtain any additional responsive documents at any later date, you promptly so inform SoundExchange and produce those documents.
13. When any request calls for the production of any portion of any document, the entire document containing any such portion must be produced.
14. Unless otherwise indicated in a particular request, this First Request for Production of Documents covers the time period from January 1, 2011 through the present.
15. In accordance with the parties' discovery agreement, please serve written responses and objections and produce any responsive documents for delivery no later than November 7, 2014.
16. Please deliver one set of all responsive documents, responses and objections to Munger, Tolles & Olson at the address below:

Anjan Choudhury
Munger Tolles & Olson LLP
355 South Grand Ave, 35th Floor
Los Angeles, 90071
(213) 683-9107
Anjan.Choudhury@mto.com

17. Documents offered in response to these requests must be furnished in as organized and usable form as possible. Spreadsheets and other documents should be produced in a manner that makes them readable and intelligible.
18. To the extent documents responsive to a request were submitted as part of your Written Direct Case, or produced as initial disclosures, you do not need to produce them in response to the request if you identify them by exhibit number (or equivalent) in your written response to the request.

DOCUMENT REQUESTS

1. All documents that relate to, concern, or comprise any data, analyses or other materials referred to, relied on, performed, or that form the basis for any expressed opinions in the written direct testimony of Dr. Brett Danaher, including any documents that concern or relate to the study described in paragraph 6 of Dr. Danaher's written direct testimony and documents sufficient to show the identity of "Tracker."
2. All documents that concern or relate to the 28 directly licensed agreements identified on page 8 of Professor Fischel and Professor Lichtman's written direct testimony, including the full text of each agreement, the full text of any amendments or attachments, the full text of any prior agreements between the parties, all drafts of the agreements, and all documents, communications, projections, presentations, or analyses, concerning or relating to the negotiation of the agreements.

3. For the directly licensed webcasting agreements between iHeartMedia and various record labels identified on page 8 of Professor Fischel and Professor Lichtman's written direct testimony, all documents relating to internal performance projections and analyses for such agreements, including but not limiting to projections or analyses concerning the total number of expected performances of the labels' sound recordings under those agreements; the average per performance rate for those agreements; any internal projections and/or analyses concerning [REDACTED]
[REDACTED]
[REDACTED]; and the [REDACTED]
[REDACTED]
4. All documents concerning or relating to internal performance projections for iHeartMedia webcasting services, including total number of performances over time, total number of listener hours over time, total number of performances per hour, total number of advertisements per hour, average length of each advertisement, average number of skips per hour, average length of each skip, total revenues attributable to webcasting over time, total number of users over time, total royalties paid over time, profitability, elasticity of advertisers' demand to purchase advertising as a function of the price of advertising and iHeartRadio's subscriber base, and elasticity of listeners' demand as a function of the quantity and nature of advertising or the market price of the service.
5. All documents concerning or relating to competition in the provision of webcasting services, including market studies, forecasts and surveys, and documents related to the market share or competitive position of iHeartMedia or any of its competitors, the relative strength or weakness of companies providing webcasting services, demand for webcasting, attempts to

win customers from other webcasting services and losses of customers to other webcasting services.

6. All documents that compare the functionality or pricing of any interactive service or interactive services in general with any non-interactive service or non-interactive services in general, including any analyses, reports, presentations, or projections.
7. All documents that refer to any aspect of competition between any non-interactive service or non-interactive services in general and any interactive service or interactive services in general.
8. All documents that discuss, refer to, concern or relate to any aspect of customization of any non-interactive service.
9. All documents that discuss, refer to, concern, or relate to the prices of any other interactive or non-interactive service.
10. All documents that discuss, refer to, concern, or relate to the impact of terrestrial radio on your webcasting radio service.
11. All documents that concern or relate to any impact that your service has on sales or licenses of music or on any other method of distributing music, including CDs, downloads, and interactive streaming services.
12. Any documents that comprise, refer to, relate to, or include any analyses, research, or presentation of the actual performance of iHeartMedia's agreement with Warner Music Group, including any documents that compare the projections related to iHeartMedia's agreement with Warner Music Group to any actual performance data related to that agreement.
13. Documents sufficient to show the number of plays of each label and the relative proportion

of plays of each label on iHeartMedia's webcasting services.

14. All documents that concern, relate to, or refer to any algorithms, formulas, or other methods used by iHeartMedia to [REDACTED]

[REDACTED]

[REDACTED] referenced on page 8 of Professor Fischel and Professor Lichtman's written direct testimony.

15. All documents relating to iHeartMedia's expectation that, [REDACTED]

[REDACTED]

[REDACTED]

16. All documents that relate to or concern iHeartMedia's efforts to reduce its music licensing costs for its Internet radio services, including any documents concerning iHeartMedia's efforts to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. All documents that concern or relate to iHeartMedia's efforts, as described on page 2 of Tom Poleman's written direct testimony, to "find and play great new music," including all documents that show, discuss, or refer to the number or percentage of performances on each of iHeartMedia's services of "great new music" as compared to the number or percentage of performances of music that iHeartMedia's listeners "already know and love."

18. All documents that relate to, concern, or comprise any survey relating to the subject of radio (terrestrial, internet simulcast or internet non-simulcast) and music discovery or the promotion of music sales conducted by, for, or with the sponsorship or involvement of iHeartMedia, including the 2013 Role of Radio and the 2014 Edison Research and Triton Digital Infinite Dial 2014 surveys referred to in Tom Poleman's written direct testimony. Such documents include documents relating to iHeartMedia's sponsorship of such survey(s); the design of such survey(s); any pre-tests, focus groups or other form of preliminary testing, and modifications to any such survey as a result of such preliminary testing; the raw data results for any survey(s); and any communications within or outside of iHeartMedia regarding any results (whether preliminary or final) and their relationship to this *Webcasting IV* proceeding.
19. All documents relating to any purpose for which iHeartMedia introduced the "On the Verge" program, including all documents that discuss the relationship between the "On the Verge" program and the *Webcasting IV* proceeding or refer to both "On the Verge" and the *Webcasting IV* proceeding.
20. Documents sufficient to show, by station and programming format, all songs that iHeartMedia has selected for the "On the Verge" program and the total number of songs and percentage of songs that iHeartMedia has performed since January 1, 2014, on stations utilizing the "On the Verge" program that have not been songs selected for the "On the Verge" program.
21. Documents sufficient to show the total costs, direct and indirect, that iHeartMedia has incurred, and the total amount of revenues received, attributable to the "On the Verge" program.

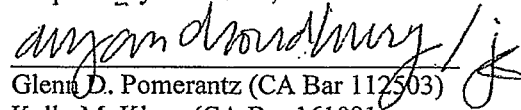
22. All documents constituting, reflecting or relating to communications within iHeartMedia or with any other person or entity relating to whether iHeartMedia's performance of any song, including any song selected for the "On the Verge," AIP or DAIP programs, has improved the chart performance, sales, or total play on radio (terrestrial, internet simulcast, custom internet radio, or satellite) of such song.
23. All documents that concern or relate to iHeartMedia's method for valuing the costs and benefits of its AIP or DAIP advertisements, including documents that show the value of time, by increment (30 seconds, 60 seconds, or longer), of AIP and DAIP advertisements, that iHeartMedia otherwise could have earned from filling that time with commercial advertisements not related to the AIP and DAIP programs.
24. All documents that concern or relate to any submission by a record label of a song for the AIP or DAIP programs.
25. All documents constituting or relating to the "PitchBook Platform," the "proprietary database" that is the subject of paragraph 26 of the written direct testimony of David Pakman, including but not limited to the database itself and all documents generated by the "research" described in the same paragraph.
26. All documents relating to any reason for the closure or failure of any of the webcasting businesses described in the written direct testimony of David Pakman, including but not limited to those described in Paragraphs 21-27 of his written testimony.
27. All documents that concern or relate to the assertion that "The high rates that have been set for the compulsory licenses for webcasting have resulted in widespread failure among webcasters," described in paragraph 19 of the written direct testimony of David Pakman, including documents supporting or contradicting the assertion.

28. All documents that concern or relate to the assertion that "larger parent companies operating internet radio services shut down their internet radio streaming services" because they were "unable to build successful businesses around them," as described in paragraph 21 of the written direct testimony of David Pakman.
29. All documents that concern or relate to any investment proposed or considered by Venrock in any business incorporating digital music, including all documents relating to the reasons Venrock either invested or did not invest in that business and all documents considered by David Pakman as the basis for his experience with the same, as described in his written direct testimony.
30. All documents referred to, referenced, consulted or otherwise used in connection with the preparation of your response to SoundExchange's First Set of Interrogatories.
31. For the years 2011 through the present, all audited and unaudited financial statements, at every level of specificity at which they are created or maintained, including but not limited to income statements, balance sheets, projections, profit and loss statements, budgets and cash flow statements, together with all supporting schedules, analyses and other materials related to, underlying, or used to support such statements.
32. Documents sufficient to show, for each year from 2011 to the present, for iHeartMedia's non-interactive streaming business and total business, iHeartMedia's total annual expenses, each source of expense incurred by iHeartMedia and the amount of each such type of expense, including but not limited to expenses from the following categories: (a) royalties for musical compositions; (b) royalties for sound recordings; (c) marketing costs; (d) costs associated with promoting artists and recordings; (e) overhead, including, without limitation, salaries, health insurance, telephone, internet, facilities, etc; (e) bandwidth; (f) development

and maintenance of technology platform, software and system; (g) licensing fees; (h) third party commissions; and (i) all other significant expenses, identified individually, to the extent not otherwise produced in response to this request.

33. Documents sufficient to show, for each year from 2011 to the present, for iHeartMedia's non-interactive streaming business and its total business, iHeartMedia's total annual revenues, each source of revenue generated by iHeartMedia and the amounts of such types of revenue, including but not limited to revenue from the following categories: (a) subscriptions (broken down by type of subscription); (b) advertising; (c) CD sales; (d) download sales; (e) referral fees; and (f) all other significant revenue, identified individually, to the extent not otherwise produced in response to this request.
34. All short-term and long-term financial projections, forecasts, budgets or analyses reflecting the projected future financial condition of iHeartMedia up to and including 2020, including but not limited to projections or other forecasts concerning revenues, broken down by category of revenue and year, and costs, broken down by category of cost and year.
35. All documents or presentations provided to potential or actual investors, financial or investment analysts, Board of Directors, or any others concerning the projected costs, revenues, financial condition, business plans and strategies of iHeartMedia or the webcasting industry, as well as materials used in preparation of such documents or presentations, and documents used to prepare for calls or meetings with any such individuals.
36. All documents, including but not limited to all communications, studies, reports, research, surveys, projections, and data, that iHeartMedia reviewed or relied upon in deriving its proposed royalty rate in this proceeding.

Respectfully submitted,



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Counsel for SoundExchange, Inc.

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that on October 13, 2014, I caused a copy of (1) **SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, RESTRICTED VERSION**, and (2) **SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS, PUBLIC VERSION** to be served by U.S. FIRST CLASS MAIL and EMAIL to the Participants as indicated below:

Participants

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Rose Leda Ehler

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 13, 2014, I caused a copy of
**SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS, PUBLIC VERSION** to be served by U.S. FIRST CLASS MAIL and EMAIL
to the Participants as indicated below:

Participants

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<p>Christopher Harrison Pandora Media, Inc. 2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com Telephone: (510) 858-3049 Facsimile: (510) 451-4286 <i>Pandora Media, Inc.</i></p>	

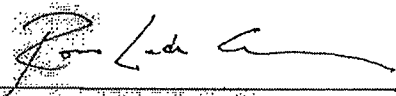

Rose Leda Ehler

EXHIBIT B

PUBLIC VERSION

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Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of)
)
)

DETERMINATION OF ROYALTY RATES) Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND) (2016-2020)
RECORDINGS AND EPHEMERAL)
RECORDINGS (WEB IV))
)

**iHEARTMEDIA, INC.'S AMENDED RESPONSES AND OBJECTIONS
TO SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 et seq., 37 C.F.R. § 351.5, the Copyright Royalty Judges' Scheduling Order dated August 29, 2014, the Parties' agreement concerning the discovery schedule as submitted to the Judges on July 29, 2014, and the Copyright Royalty Judges' Order Granting Services' Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds dated October 30, 2014, iHeartMedia, Inc. ("iHeartMedia") hereby responds and objects to SoundExchange, Inc.'s First Set of Requests for Production of Documents (the "Requests").

GENERAL OBJECTIONS

1. iHeartMedia objects to the definition of "iHeartMedia" to the extent it purports to seek documents from parties that are neither participants in the *Webcasting IV* proceeding nor have submitted testimony as a part of iHeartMedia's written direct statement. In objecting and responding to these Requests, iHeartMedia interprets "iHeartMedia" to refer only to iHeartMedia, Inc. and the witnesses and experts who submitted testimony as a part of iHeartMedia's written direct statement in the *Webcasting IV* proceeding.

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2. iHeartMedia objects to the Requests insofar as they seek documents that are not reasonably available. iHeartMedia will produce documents and information, including Electronically Stored Information, only to the extent reasonably available.

3. iHeartMedia objects to the Requests to the extent they are overly broad, non-specific, vague, ambiguous, unduly burdensome, duplicative, or unreasonable.

4. iHeartMedia objects to the Requests to the extent they call for the intentional disclosure of materials protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege that would shield material from disclosure in whole or in part. iHeartMedia will exclude from its production all documents or parts of documents protected by any applicable privilege or doctrine.

5. iHeartMedia objects to the Requests to the extent that they seek documents that are not directly related to iHeartMedia's written direct statement.

6. iHeartMedia objects to the Requests to the extent they seek materials that are publicly available or have already been produced by iHeartMedia to SoundExchange.

7. iHeartMedia objects to the Requests to the extent they request "all" or "any" documents or purport to impose similar obligations on iHeartMedia. Subject to its objections, iHeartMedia will search those files in its possession or control where there is a reasonable likelihood that responsive documents may be located and will make a good-faith effort to produce non-privileged, responsive documents.

8. iHeartMedia objects to the Requests to the extent they call for the creation of new documents, reports, spreadsheets, or data compilations. iHeartMedia will produce documents generated or maintained in the ordinary course of business.

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9. iHeartMedia objects to Instruction No. 12 to the extent it seeks documents “previously within [iHeartMedia’s] knowledge, possession, or control.” iHeartMedia cannot and will not produce documents or information about which it has no knowledge or over which it has no possession or control. iHeartMedia will produce only responsive, non-privileged documents that are within iHeartMedia’s current knowledge, possession, or control, or that come into iHeartMedia’s possession or control during the pendency of the *Webcasting IV* proceeding.

10. iHeartMedia objects to Definition No. 8 to the extent that it broadens the scope of any Request to include documents “having any logical or factual connection with the subject matter.”

11. iHeartMedia reserves the right to modify, supplement, or amend any or all of these responses, if necessary or appropriate, and to produce additional non-privileged, responsive documents if any are located.

12. These General Objections are incorporated by reference into each and every response below to the extent applicable. Various objections may be specifically referred to in the responses below for purposes of clarity. Failure to incorporate specifically an objection, however, should not be construed as a waiver of any such objection.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1: All documents that relate to, concern, or comprise any data, analyses or other materials referred to, relied on, performed, or that form the basis for any expressed opinions in the written direct testimony of Dr. Brett Danaher, including any documents that concern or relate to the study described in paragraph 6 of Dr. Danaher’s written direct testimony and documents sufficient to show the identity of “Tracker.”

RESPONSE TO REQUEST NO. 1: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and exceeds the Stipulation of the Participants Regarding the Scope of Expert Discovery dated May 13, 2014, to the extent it seeks “[a]ll

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documents” and “any documents” that “relate to” or “concern” Dr. Danaher’s written direct testimony. All documents that Dr. Danaher referenced or relied upon in formulating the opinions in his written direct testimony have already been provided to SoundExchange as part of iHeartMedia’s initial disclosures. *See* Bates Numbers IHM_EXP_0002223–0002400, IHM_EXP_0002455–0002456. iHeartMedia further objects to this Request to the extent it seeks “documents sufficient to show the identity of ‘Tracker.’” Although the written contract with “Tracker” states that its identity shall not be revealed, Tracker has authorized the disclosure of that information subject to the Protective Order entered in this case. Attachment A contains the identity of Tracker.

REQUEST NO. 2: All documents that concern or relate to the 28 directly licensed agreements identified on page 8 of Professor Fischel and Professor Lichtman’s written direct testimony, including the full text of each agreement, the full text of any amendments or attachments, the full text of any prior agreements between the parties, all drafts of the agreements, and all documents, communications, projections, presentations, or analyses, concerning or relating to the negotiation of the agreements.

RESPONSE TO REQUEST NO. 2: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome to the extent it seeks “all documents, communications, projections, presentations, or analyses” that “concern or relate” to the 28 directly licensed agreements identified on page 8 of the written direct testimony of Professors Fischel and Lichtman. Subject to and without waiving the foregoing objection, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: All documents regarding the 28 directly licensed agreements that Professors Fischel and Lichtman relied upon in formulating the opinions in their written direct testimony—including the full text of all 28 directly licensed agreements—have been provided to SoundExchange as part of iHeartMedia’s initial disclosures. *See* Bates Numbers IHM_EXP_0000001–0002222, IHM_EXP_0002401–0002454. iHeartMedia

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has also conducted a reasonable search and inquiry into where additional responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 3: For the directly licensed webcasting agreements between iHeartMedia and various record labels identified on page 8 of Professor Fischel and Professor Lichtman's written direct testimony, all documents relating to internal performance projections and analyses for such agreements, including but not limiting to [sic] projections or analyses concerning the total number of expected performances of the labels' sound recordings under those agreements; the average per performance rate for those agreements; any internal projections and/or analyses concerning [REDACTED]

and the [REDACTED]

RESPONSE TO REQUEST NO. 3: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks "all documents" "relating to" or "concerning" the specified subject matter. iHeartMedia further objects to this Request on the ground that the terms "performance projections and analyses," "total number of expected performances," and "average per performance rate" are vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the terms "performance projections and analyses," "total number of expected performances," and "average per performance rate" in accordance with their plain and ordinary meaning. All documents regarding iHeartMedia's projections and analyses of the 28 directly licensed agreements that Professors Fischel and Lichtman relied upon in formulating the opinions in their written direct testimony have been provided to SoundExchange as part of iHeartMedia's initial disclosures. iHeartMedia has also conducted a reasonable search and inquiry into where additional responsive documents are most

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likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 4: All documents concerning or relating to internal performance projections for iHeartMedia webcasting services, including total number of performances over time, total number of listener hours over time, total number of performances per hour, total number of advertisements per hour, average length of each advertisement, average number of skips per hour, average length of each skip, total revenues attributable to webcasting over time, total number of users over time, total royalties paid over time, profitability, elasticity of advertisers' demand to purchase advertising as a function of the price of advertising and iHeartRadio's subscriber base, and elasticity of listeners' demand as a function of the quantity and nature of advertising or the market price of the service.

RESPONSE TO REQUEST NO. 4: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks "[a]ll documents concerning or relating to" the specified subject matter. iHeartMedia further objects to this Request on the ground that the terms "over time," "performance projections," "advertisements," "length of each advertisement," "skips," "average length of each skip," "total revenues attributable to webcasting," "subscriber base," "listeners," "total number of users," "profitability," and "elasticity . . . of demand," are vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the terms "over time," "performance projections," "advertisements," "length of each advertisement," "skips," "average length of each skip," "total revenues attributable to webcasting," "subscriber base," "listeners," "total number of users," "profitability," and "elasticity . . . of demand" in accordance with their plain and ordinary meaning. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents (specifically, internal performance projections for iHeartMedia's iHeartRadio service

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that are maintained in the ordinary course of business) are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 5: All documents concerning or relating to competition in the provision of webcasting services, including market studies, forecasts and surveys, and documents related to the market share or competitive position of iHeartMedia or any of its competitors, the relative strength or weakness of companies providing webcasting services, demand for webcasting, attempts to win customers from other webcasting services and losses of customers to other webcasting services.

RESPONSE TO REQUEST NO. 5: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome to the extent it seeks “[a]ll documents concerning or relating to competition in the provision of webcasting services.” iHeartMedia further objects to this Request on the ground that the terms “competition in the provision of webcasting services,” “relative strength or weakness,” and “demand for webcasting,” are vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the terms “competition in the provision of webcasting services,” “relative strength or weakness,” and “demand for webcasting” in accordance with their plain and ordinary meaning. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 6: All documents that compare the functionality or pricing of any interactive service or interactive services in general with any non-interactive service or non-interactive services in general, including any analyses, reports, presentations, or projections.

RESPONSE TO REQUEST NO. 6: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks “[a]ll documents” and “any analyses, reports, presentations, or projections.” iHeartMedia further objects to this Request on the ground that the terms “functionality” and “pricing” are vague and ambiguous. Subject to

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and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the terms “functionality” and “pricing” in accordance with their plain and ordinary meaning. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 7: All documents that refer to any aspect of competition between any non-interactive service or non-interactive services in general and any interactive service or interactive services in general.

RESPONSE TO REQUEST NO. 7: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks “[a]ll documents that refer to any aspect of competition,” between non-interactive and interactive services. iHeartMedia further objects to this Request on the ground that the phrase “any aspect of competition” is vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the phrase “any aspect of competition” to mean any aspect of competition directly relevant to this proceeding. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents (namely, documents relating to competition between iHeartRadio and other webcasting services) are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 8: All documents that discuss, refer to, concern or relate to any aspect customization of any non-interactive service.

RESPONSE TO REQUEST NO. 8: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks “[a]ll documents that

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discuss, refer to, concern or relate to” the specified subject matter. iHeartMedia further objects to this Request on the ground that the phrase “any aspect of customization” is vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the phrase “any aspect of customization” to mean any aspect of customization directly relevant to this proceeding. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents (namely, documents related to customization of iHeartRadio) are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 9: All documents that discuss, refer to, concern, or relate to the prices of any other interactive or non-interactive service.

RESPONSE TO REQUEST NO. 9: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks “[a]ll documents that discuss, refer to, concern, or relate to” prices for webcasting services. iHeartMedia further objects to this Request on the ground that the term “prices” is vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the term “prices” in accordance with its plain and ordinary meaning, and further notes that for purposes of this response iHeartMedia has not considered advertising to be a “price” for a service. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 10: All documents that discuss, refer to, concern, or relate to the impact of terrestrial radio on your webcasting radio service.

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RESPONSE TO REQUEST NO. 10: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks “[a]ll documents that discuss, refer to, concern, or relate to” the specified subject matter. iHeartMedia further objects to this Request on the ground that the terms “impact,” “terrestrial radio,” and “your webcasting service” are vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the terms “impact” and “terrestrial radio” in accordance with their plain and ordinary meaning and construes the term “your webcasting service” to mean the iHeartRadio service. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 11: All documents that concern or relate to any impact that your service has on sales or licenses of music or on any other method of distributing music, including CDs, downloads, and interactive streaming services.

RESPONSE TO REQUEST NO. 11: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks “[a]ll documents that concern or relate to any impact” of iHeartMedia’s service. iHeartMedia further objects to this Request on the ground that the terms “impact” and “your service” are vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the term “impact” in accordance with its plain and ordinary meaning and construes the term “your service” to mean the iHeartRadio service. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged

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documents located during that search. Subject to the terms discussed on the meet-and-confer between counsel for iHeartMedia and SoundExchange on November 20, 2014, iHeartMedia will search for additional documents regarding the "Buy" button on iHeartRadio.

REQUEST NO. 12: Any documents that comprise, refer to, relate to, or include any analyses, research, or presentation of the actual performance of iHeartMedia's agreement with Warner Music Group, including any documents that compare the projections related to iHeartMedia's agreement with Warner Music Group to any actual performance data related to that agreement.

RESPONSE TO REQUEST NO. 12: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks "[a]ny documents that comprise, refer to, relate to, or include" the specified subject matter. iHeartMedia further objects to this Request on the ground that the terms "projections," "actual performance," and "performance data" are vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the terms "projections," "actual performance," and "performance data" in accordance with their plain and ordinary meaning. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 13: Documents sufficient to show the number of plays of each label and the relative proportion of plays of each label on iHeartMedia's webcasting services.

RESPONSE TO REQUEST NO. 13: iHeartMedia objects to this Request on the ground that the term "label" is vague and ambiguous. Subject to and without waiving the foregoing objection, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the term "label" in accordance with its plain and ordinary meaning, and

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for purposes of this request will limit its response to the three major record labels. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 14: All documents that concern, relate to, or refer to any algorithms, formulas, or other methods used by iHeartMedia to [REDACTED]
[REDACTED] referenced on page 8 of Professor Fischel and Professor Lichitman's written direct testimony.

RESPONSE TO REQUEST NO. 14: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks "[a]ll documents that concern, relate to, or refer to" the specified subject matter. Subject to and without waiving the foregoing objection, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. In response to Request No. 14 in SoundExchange's Second Set of Requests for Production of Documents, iHeartMedia will also conduct an additional search for documents regarding [REDACTED] technology, and will produce any responsive, non-privileged documents located during that search.

REQUEST NO. 15: All documents relating to iHeartMedia's expectation that, [REDACTED]
[REDACTED]

RESPONSE TO REQUEST NO. 15: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks "[a]ll documents relating to" the specified subject matter. iHeartMedia further objects to this Request on the

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ground that it mischaracterizes the written direct testimony to which it relates. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 16: All documents that relate to or concern iHeartMedia's efforts to reduce its music licensing costs for its Internet radio services, including any documents concerning iHeartMedia's efforts to [REDACTED]

[REDACTED]

RESPONSE TO REQUEST NO. 16: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks "[a]ll documents" and "any documents" that "relate to or concern" the specified subject matter. iHeartMedia further objects to this Request to the extent it is duplicative of other Requests. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

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REQUEST NO. 17: All documents that concern or relate to iHeartMedia's efforts, as described on page 2 of Tom Poleman's written direct testimony, to "find and play great new music," including all documents that show, discuss, or refer to the number or percentage of performances on each of iHeartMedia's services of "great new music" as compared to the number or percentage of performances of music that iHeartMedia's listeners "already know and love."

RESPONSE TO REQUEST NO. 17: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks "[a]ll documents" that "concern or relate to" the specified subject matter. iHeartMedia has already produced hundreds of pages of documents that "concern or relate to" Mr. Poleman's testimony regarding iHeartMedia's efforts to seek out new music and artists. *See* Testimony of Tom Poleman ("Poleman Testimony") Exs. A-E. Subject to and without waiving the foregoing objection, iHeartMedia indicated it was willing to meet and confer with SoundExchange regarding this Request.

REQUEST NO. 18: All documents that relate to, concern, or comprise any survey relating to the subject of radio (terrestrial, internet simulcast or internet non-simulcast) and music discovery or the promotion of music sales conducted by, for, or with the sponsorship or involvement of iHeartMedia, including the 2013 Role of Radio and the 2014 Edison Research and Triton Digital Infinite Dial 2014 surveys referred to in Tom Poleman's written direct testimony. Such documents include documents relating to iHeartMedia's sponsorship of such survey(s); the design of such survey(s); any pre-tests, focus groups or other form of preliminary testing, and modifications to any such survey as a result of such preliminary testing; the raw data results for any survey(s); and any communications within or outside of iHeartMedia regarding any results (whether preliminary or final) and their relationship to this *Webcasting IV* proceeding.

RESPONSE TO REQUEST NO. 18: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks "[a]ll documents that relate to, concern, or comprise any survey relating to the subject of radio," "music discovery," and "the promotion of music sales." Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: As indicated in Mr.

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Poleman's written direct testimony, the *Infinite Dial 2014* survey is publicly available at <http://www.edisonresearch.com/wp-content/uploads/2014/03/The-Infinite-Dial-2014-from-Edison-Research-and-Triton-Digital.pdf>. Poleman Testimony at 2 n.3. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search, including copies of the *Infinite Dial 2014* and *2013 Role of Radio* surveys.

REQUEST NO. 19: All documents relating to any purpose for which iHeartMedia introduced the "On the Verge" program, including all documents that discuss the relationship between the "On the Verge" program and the *Webcasting IV* proceeding or refer to both "On the Verge" and the *Webcasting IV* proceeding.

RESPONSE TO REQUEST NO. 19: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it seeks "[a]ll documents relating to" the specified subject matter. iHeartMedia further objects to this Request to the extent it assumes the existence of any "relationship between the 'On the Verge' program and the *Webcasting IV* proceeding." Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: Subject to the terms discussed on the meet-and-confer between counsel for iHeartMedia and SoundExchange on November 20, 2014, iHeartMedia agrees to produce any additional responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist.

REQUEST NO. 20: Documents sufficient to show, by station and programming format, all songs that iHeartMedia has selected for the "On the Verge" program and the total number of songs and percentage of songs that iHeartMedia has performed since January 1, 2014, on stations utilizing the "On the Verge" program that have not been songs selected for the "On the Verge" program.

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RESPONSE TO REQUEST NO. 20: iHeartMedia objects to this Request to the extent it calls for the creation of new documents, reports, spreadsheets, or data compilations. Subject to and without waiving the foregoing objection, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. Subject to the terms discussed on the meet-and-confer between counsel for iHeartMedia and SoundExchange on November 20, 2014, iHeartMedia agrees to produce any additional responsive, non-privileged documents located after a further reasonable and diligent search to the extent such documents exist.

REQUEST NO. 21: Documents sufficient to show the total costs, direct and indirect, that iHeartMedia has incurred, and the total amount of revenues received, attributable to the "On the Verge" program.

RESPONSE TO REQUEST NO. 21: iHeartMedia objects to this Request on the ground that the terms "total costs," "direct and indirect," and "attributable to" are vague and ambiguous. iHeartMedia further objects to this Request to the extent it is duplicative of other Requests. iHeartMedia further objects to this Request to the extent it calls for the creation of new documents, reports, spreadsheets, or data compilations. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. Subject to the terms discussed on the meet-and-confer between counsel for iHeartMedia and SoundExchange on November 20, 2014, iHeartMedia agrees to produce any

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additional responsive, non-privileged documents located after a further reasonable and diligent search to the extent such documents exist

REQUEST NO. 22: All documents constituting, reflecting or relating to communications with iHeartMedia or with any other person or entity relating to whether iHeartMedia's performance of any song, including any song selected for the "On the Verge," AIP or DAIP programs, has improved the chart performance, sales, or total play on radio (terrestrial, internet simulcast, custom internet radio, or satellite) of such song.

RESPONSE TO REQUEST NO. 22: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks "[a]ll documents constituting, reflecting or relating to" the specified subject matter. iHeartMedia further objects to this Request to the extent it seeks documents from "any other person," and data on "chart performance," "sales," and "play" on services other than those owned and operated by iHeartMedia, and thereby seeks documents outside of iHeartMedia's knowledge, possession, or control. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has already produced documents responsive to this Request in connection with Mr. Poleman's testimony. *See Poleman Testimony Exs. A-E.* Subject to the terms discussed on the meet-and-confer between counsel for iHeartMedia and SoundExchange on November 20, 2014, iHeartMedia agrees to produce any additional responsive, non-privileged documents located after a further reasonable and diligent search to the extent such documents exist

REQUEST NO. 23: All documents that concern or relate to iHeartMedia's method for valuing the costs and benefits of its AIP or DAIP advertisements, including documents that show the value of time, by increment (30 seconds, 60 seconds, or longer), of AIP and DAIP advertisements, that iHeartMedia otherwise could have earned from filling that time with commercial advertisements not related to the AIP and DAIP programs.

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RESPONSE TO REQUEST NO. 23: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks “[a]ll documents that concern or relate to” the specified subject matter. iHeartMedia further objects to this Request on the ground that the term “costs and benefits” is vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes the term “costs and benefits” in accordance with its plain and ordinary meaning. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. Subject to the terms discussed on the meet-and-confer between counsel for iHeartMedia and SoundExchange on November 20, 2014, iHeartMedia agrees to produce any additional responsive, non-privileged documents located after a further reasonable and diligent search to the extent such documents exist

REQUEST NO. 24: All documents that concern or relate to any submission by a record label of a song for the AIP or DAIP programs.

RESPONSE TO REQUEST NO. 24: iHeartMedia objects to this Request on the ground that it overly broad and unduly burdensome, to the extent that it seeks “[a]ll documents that concern or relate to” the specified subject matter. iHeartMedia further objects to this Request to the extent it seeks documents outside of iHeartMedia’s knowledge, possession, or control. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. Subject to the terms discussed on the

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meet-and-confer between counsel for iHeartMedia and SoundExchange on November 20, 2014

iHeartMedia agrees to produce any additional responsive, non-privileged documents located after a further reasonable and diligent search to the extent such documents exist

REQUEST NO. 25: All documents constituting or relating to the “Pitchbook Platform,” the “proprietary database” that is the subject of paragraph 26 of the written direct testimony of David Pakman, including but not limited to the database itself and all documents generated by the “research” described in the same paragraph.

RESPONSE TO REQUEST NO. 25: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent that it seeks “[a]ll documents constituting or relating to” the Pitchbook Platform. iHeartMedia further objects to this Request to the extent the documents requested, including the Pitchbook Platform database itself, are outside of iHeartMedia’s knowledge, possession, or control. iHeartMedia met and conferred with SoundExchange regarding this Request on November 18, 2014, explained the licensing and technological constraints related to the PitchBook Platform, and explained its understanding from PitchBook that PitchBook will provide access to the Pitchbook Platform consistent with the agreement reached between the parties. The National Association of Broadcasters (“NAB”) joins in this response, incorporates its General Responses and Objections to SoundExchange’s First Request for Production of Documents to NAB into this response, and objects to this Request on the same grounds as iHeartMedia.

REQUEST NO. 26: All documents relating to any reason for the closure or failure of any of the webcasting businesses described in the written direct testimony of David Pakman, including but not limited to those described in Paragraphs 21–27 of his written testimony.

RESPONSE TO REQUEST NO. 26: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and exceeds the Stipulation of the Participants Regarding the Scope of Expert Discovery dated May 13, 2014, to the extent it seeks “[a]ll documents relating to” the specified subject matter. Many of the documents responsive to

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this Request are publicly available. As iHeartMedia explained during the November 18, 2014, meet-and-confer between counsel for iHeartMedia and SoundExchange, all documents that Mr. Pakman referenced, reviewed, or relied upon in formulating the opinions in his written direct testimony have already been provided to SoundExchange as part of iHeartMedia's initial disclosures, including any such documents that are responsive to this Request. *See* Bates Numbers IHM_EXP-NAB_0000001-0000479. NAB joins in this response, incorporates its General Responses and Objections to SoundExchange's First Request for Production of Documents to NAB into this response, and objects to this Request on the same grounds as iHeartMedia.

REQUEST NO. 27: All documents that concern or relate to the assertion that "The high rates that have been set for the compulsory licenses for webcasting have resulted in widespread failure among webcasters," described in paragraph 19 of the written direct testimony of David Pakman, including documents supporting or contradicting the assertion.

RESPONSE TO REQUEST NO. 27: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and exceeds the Stipulation of the Participants Regarding the Scope of Expert Discovery dated May 13, 2014, to the extent it seeks "[a]ll documents that concern or relate to" the specified subject matter. Many documents responsive to this request are either publicly available or outside of iHeartMedia's knowledge, possession, or control. As iHeartMedia explained during the November 18, 2014, meet-and-confer between counsel for iHeartMedia and SoundExchange, all documents that Mr. Pakman referenced, reviewed, or relied upon in formulating the opinions in his written direct testimony have already been provided to SoundExchange as part of iHeartMedia's initial disclosures, including any such documents that are responsive to this Request. *See* Bates Numbers IHM_EXP-NAB_0000001-0000479. NAB joins in this response, incorporates its General

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Responses and Objections to SoundExchange's First Request for Production of Documents to NAB into this response, and objects to this Request on the same grounds as iHeartMedia.

REQUEST NO. 28: All documents that concern or relate to the assertion that "larger parent companies operating internet radio services shut down their internet radio streaming services" because they were "unable to build successful businesses around them," as described in paragraph 21 of the written direct testimony of David Pakman.

RESPONSE TO REQUEST NO. 28: iHeartMedia objects to this Request on the ground that it is overly broad; unduly burdensome, and exceeds the Stipulation of the Participants Regarding the Scope of Expert Discovery dated May 13, 2014, to the extent it seeks "[a]ll documents that concern or relate to" the specified subject matter. Many documents responsive to this Request are either publicly available or outside of iHeartMedia's knowledge, possession, or control. As iHeartMedia explained during the November 18, 2014, meet-and-confer between counsel for iHeartMedia and SoundExchange, all documents that Mr. Pakman referenced, reviewed, or relied upon in formulating the opinions in his written direct testimony have already been provided to SoundExchange as part of iHeartMedia's initial disclosures, including any such documents that are responsive to this Request. *See* Bates Numbers IHM_EXP-NAB_0000001-0000479. NAB joins in this response, incorporates its General Responses and Objections to SoundExchange's First Request for Production of Documents to NAB into this response, and objects to this Request on the same grounds as iHeartMedia.

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REQUEST NO. 29: All documents that concern or relate to any investment proposed or considered by Venrock in any business incorporating digital music, including all documents relating to the reasons Venrock either invested or did not invest in that business and all documents considered by David Pakman as the basis for his experience with the same, as described in his written direct testimony.

RESPONSE TO REQUEST NO. 29: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and exceeds the Stipulation of the Participants Regarding the Scope of Expert Discovery dated May 13, 2014, to the extent it seeks “[a]ll documents that concern or relate to” the specified subject matter. Many of the documents responsive to this Request are either publicly available or outside of iHeartMedia’s knowledge, possession, or control. As iHeartMedia explained during the November 18, 2014, meet-and-confer between counsel for iHeartMedia and SoundExchange, all documents that Mr. Pakman referenced, reviewed, or relied upon in formulating the opinions in his written direct testimony have already been provided to SoundExchange as part of iHeartMedia’s initial disclosures, including any such documents that are responsive to this Request. *See* Bates Numbers IHM_EXP-NAB_0000001–0000479. Subject to the foregoing objections, however, iHeartMedia has also produced any notes in Mr. Pakman’s possession concerning digital music investment opportunities that he has considered since 2011, to the extent those materials could be located after a reasonable search; and, as it also explained during the meet-and-confer between counsel for iHeartMedia and SoundExchange on November 18, 2014, there are other publicly-available materials that permit SoundExchange to evaluate Venrock’s investments. iHeartMedia does not believe there any documents in iHeartMedia’s possession or control that are responsive to this Request. NAB joins in this response, incorporates its General Responses and Objections to SoundExchange’s First Request for Production of Documents to NAB into this response, and objects to this Request on the same grounds as iHeartMedia.

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REQUEST NO. 30: All documents referred to, referenced, consulted or otherwise used in connection with the preparation of your response to SoundExchange's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 30: iHeartMedia objects to this Request to the extent it seeks production of documents that are protected by the attorney-client, work product, or any other applicable privilege. Subject to and without waiving the foregoing objection iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 31: For the years 2011 through the present, all audited and unaudited financial statements, at every level of specificity at which they are created or maintained, including but not limited to income statements, balance sheets, projections, profit and loss statements, budgets and cash flow statements, together with all supporting schedules, analyses and other materials related to, underlying, or used to support such statements.

RESPONSE TO REQUEST NO. 31: iHeartMedia objects to this Request on the ground that it is overly broad and unduly burdensome, to the extent it is not limited to the services at issue in this proceeding and to the extent it seeks "all" materials related to iHeartMedia's financial statements. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes this Request as pertaining solely to iHeartRadio. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. *See also* iHeartMedia, Inc.'s Responses and Objections to SoundExchange's First Set of Interrogatories ("*Interrogatory Responses*") at 3-5 (Nov. 8, 2014).

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REQUEST NO. 32: Documents sufficient to show, for each year from 2011 to the present, for iHeartMedia's non-interactive streaming business and total business, iHeartMedia's total annual expenses, each source of expense incurred by iHeartMedia and the amount of each such type of expense, including but not limited to expenses from the following categories: (a) royalties for musical compositions; (b) royalties for sound recordings; (c) marketing costs; (d) costs associated with promoting artists and recordings; (e) overhead, including, without limitation, salaries, health insurance, telephone, internet, facilities, etc.; (f) bandwidth; (g) development and maintenance of technology platforms, software and system; (h) licensing fees; (i) third party commissions; and (j) all other significant expenses, identified individually, to the extent not otherwise produced in response to this request.

RESPONSE TO REQUEST NO. 32: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and irrelevant, to the extent it seeks information regarding iHeartMedia's "total business," as opposed to its iHeartRadio business. iHeartMedia further objects to this Request on the ground that the term "significant expenses" is vague and ambiguous. iHeartMedia further objects to this Request to the extent it calls for the creation of new documents, reports, spreadsheets, or data compilations. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes this Request as pertaining solely to iHeartRadio. iHeartMedia construes the term "significant expenses" in accordance with its plain and ordinary meaning. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. *See also Interrogatory Responses at 3-5.*

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REQUEST NO. 33: Documents sufficient to show, for each year from 2011 to the present, for iHeartMedia's non-interactive streaming business and its total business, iHeartMedia's total annual revenues, each source of revenue generated by iHeartMedia and the amounts of such types of revenue, including but not limited to revenue from the following categories: (a) subscriptions (broken down by type of subscription); (b) advertising; (c) CD sales; (d) download sales; (e) referral fees; and (f) all other significant revenue, identified individually, to the extent not otherwise produced in response to this request.

RESPONSE TO REQUEST NO. 33: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and irrelevant, to the extent it seeks information regarding iHeartMedia's "total business," as opposed to its iHeartRadio business. iHeartMedia further objects to this Request on the ground that the term "significant revenue" is vague and ambiguous. iHeartMedia further objects to this Request to the extent it calls for the creation of new documents, reports, spreadsheets, or data compilations. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes this Request as pertaining solely to iHeartRadio. iHeartMedia construes the term "significant revenue" in accordance with its plain and ordinary meaning. iHeartMedia has conducted a reasonable search and inquiry into where responsive documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search. *See also Interrogatory Responses at 3-5.*

REQUEST NO. 34: All short-term and long-term financial projections, forecasts, budgets or analyses reflecting the projected future financial condition of iHeartMedia up to and including 2020, including but not limited to projections or other forecasts concerning revenues, broken down by category of revenue and year, and costs, broken down by category of cost and year.

RESPONSE TO REQUEST NO. 34: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and irrelevant, to the extent it seeks information regarding iHeartMedia's entire business, as opposed to its iHeartRadio business, and

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to the extent it seeks “[a]ll short-term and long-term financial projections, forecasts, budgets or analyses.” iHeartMedia further objects to this Request on the ground that the term “future financial condition” is vague and ambiguous. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes this Request as pertaining solely to iHeartRadio. iHeartMedia construes the term “future financial condition” in accordance with its plain and ordinary meaning. iHeartMedia has produced non-privileged documents sufficient to show iHeartMedia’s short-term and long-term financial projections, forecasts, budgets or analyses, if any, with respect to the “future financial condition” of iHeartRadio up to and including the year 2020. *See also, e.g., Interrogatory Responses* at 3–5.

REQUEST NO. 35: All documents or presentations provided to potential or actual investors, financial or investment analysts, Board[s] of Directors, or any others concerning the projected costs, revenues, financial condition, business plans and strategies of iHeartMedia or the webcasting industry, as well as materials used in preparation of such documents or presentations, and documents used to prepare for calls or meetings with any such individuals.

RESPONSE TO REQUEST NO. 35: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and irrelevant, to the extent it seeks information regarding iHeartMedia’s entire business, as opposed to its iHeartRadio business, and to the extent it seeks “[a]ll documents or presentations” concerning the specified subject matter. iHeartMedia further objects to this Request to the extent it is duplicative of other Requests. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: iHeartMedia construes this Request as pertaining solely to iHeartRadio. iHeartMedia has conducted a reasonable search and inquiry into where responsive

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documents are most likely to be found, and has produced any responsive, non-privileged documents located during that search.

REQUEST NO. 36: All documents, including but not limited to all communications, studies, reports, research, surveys, projections, and data, that iHeartMedia reviewed or relied upon in deriving its proposed royalty rate in this proceeding.

RESPONSE TO REQUEST NO. 36: iHeartMedia objects to this Request on the ground that it is overly broad, unduly burdensome, and exceeds the Stipulation of the Participants Regarding the Scope of Expert Discovery dated May 13, 2014, to the extent that it seeks “[a]ll documents” related to the issues in this proceeding. iHeartMedia further objects to this Request to the extent it is duplicative of other Requests. iHeartMedia further objects to this Request to the extent it seeks production of documents that are protected by the attorney-client, work product, or any other applicable privilege. Subject to and without waiving the foregoing objections, iHeartMedia agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: All documents that iHeartMedia’s expert witnesses referenced or relied on in formulating their opinions as to iHeartMedia’s proposed royalty rates have already been produced to SoundExchange as part of iHeartMedia’s initial disclosures. *See* Bates Numbers IHM_EXP_0000001–0002454, IHM_EXP-NAB_0000001–0000479. To the extent this Request seeks documents in addition to those already produced, iHeartMedia indicated it was willing to meet and confer with Sound Exchange to determine if this Request can be narrowed consistent with iHeartMedia’s objections.

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Dated: November 24, 2014

Respectfully submitted,

iHEARTMEDIA, INC.

/s/ Evan T. Leo

John Thorne

Evan T. Leo

KELLOGG, HUBER, HANSEN, TODD,

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Counsel for iHeartMedia, Inc.

CERTIFICATE OF SERVICE

I, Evan T. Leo, hereby certify that a copy of the foregoing PUBLIC - iHeartMedia, Inc.'s Amended Responses and Objections to SoundExchange's First Set of Requests for Production of Documents has been served on this 24th day of November 2014 on the following persons:

<p>Kurt Hanson AccuRadio, LLC 65 E. Wacker Place, Suite 930 Chicago, IL 60601 kurt@accuradio.com</p> <p><i>AccuRadio, LLC</i></p>	<p>Jeffrey J. Jarmuth Law Offices of Jeffrey J. Jarmuth 34 E. Elm Street Chicago, IL 60611-1016 jeff.jarmuth@jarmuthlawoffices.com</p> <p><i>Counsel for AccuRadio, LLC</i></p>
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/s/ Evan T. Leo

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EXHIBIT C

PUBLIC VERSION

RESTRICTED – Withheld per Protective Order in Docket No. 14-CRB-001-WR (2016-2020) Webcasting IV

PUBLIC VERSION

PUBLIC VERSION

Ex. C - 1

IHM_EXP-NAB_0000420

RESTRICTED – Withheld per Protective Order in Docket No. 14-CRB-001-WR (2016-2020) Webcasting IV

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on December 3, 2014, I caused a copy of the foregoing PUBLIC — **SOUNDEXCHANGE'S MOTION TO COMPEL iHEARTMEDIA TO PRODUCE DOCUMENTS RELATED TO THE TESTIMONY OF DAVID PAKMAN** to be served via electronic mail and via first-class, postage prepaid, United States mail, to the Participants as indicated below:

Participants

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